

BIGFORK LAND USE ADVISORY COMMITTEE
Approved Minutes Thursday, November 29, 2018
Bethany Lutheran Church – Downstairs

Chairwoman Susan Johnson called the meeting to order at 4:10 p.m. Member Ockert stated she needed to leave at 5:30, a quorum would be maintained.

Present: Committee members: Susan Johnson, Shelley Gonzales, Jerry Sorensen, Lou McGuire, and Chany Ockert. Public: Twenty-six members. Flathead County Planning and Zoning: Mark Mussman, Donna Valade, Rachel Ezell, and Erick Mack.

The agenda was adopted (m/s, L. McGuire/J. Sorensen) unanimous
Approval of draft minutes dated October 25, 2018 (m/s, L. McGuire/J. Sorensen) unanimous.

Administrator's Report and Announcements:

Sign-in sheet with e-mail address. Draft minutes and documents are posted on the County website: flathead.mt.gov/planning_zoning, Click on: [meeting information](#).

FCZ-18-19 Calaway/Olson was recommended for approval by the Planning Board. The county commissioners will hear the application on December 11, 2018 at 10 a.m. at the county court house.

Public Comment:

None

Applications:

1. **FCU-18-10** - A request from Lisa Batten for a conditional use permit to operate a commercial kennel on a lot located within the Echo Lake Zoning District. The property is located at 645 Echo View Drive and is zoned SAG-5 (Suburban Residential). The property contains approximately 5 acres.

Staff Report:

Donna Valade presented the application. She referenced the 11-21 comments from Environmental Health and DEQ. She stated there were 7 emailed comments in opposition, 6 new comments in opposition and 3 new comments in favor of the application. Issues mentioned in the emails were noise, traffic and decline in property values. Valade stated the shop where the kennels will be located will have heat, air conditioning and sound proofing. There will be divisions between each kennel, so the dogs cannot see each other to reduce barking.

Q. Gonzales: Can you quantify the level of sound proofing? A. Valade: It will be in the mid-range of the levels of sound proofing products.

Q. Ockert: What noise standard was used, general or a standard based on being by a lake? A. Valade: General standard.

Q. McGuire: The CUP states the property is SAG-5 Suburban agricultural, but states the property is SAG-5 Suburban residential, which is it? A. Valade:

Q. Sorensen: This is SAG-5 but many of the lots are much smaller. A. Valade: Zoning was put in place after the lots were established and thus are grandfathered in.

Q. Sorensen: Is the required setback is 150 feet? A. Valade: If there is sound proofing in the building, no.

Q. Ockert: What about dogs not in the kennel? A. Valade: Let the applicant respond.

Q. Ockert: Is there an alternative to a drain field? It is not likely to be connected to a sewer system any time soon. A. Valade: No, but DEQ requirements are very stringent.

Applicant Report:

Lisa Batten stated that she has an existing kennel business in Lake county. Her neighbors have no problems with her business. Too many dogs are noisy which is why she limits the number of dogs.

Q. Johnson: What type of soundproofing will be used? A. Batten: Sheet rock, keeps noise in building.

Q. Johnson: What about the noise from the outside dog area? A. Batten: There is an 8-foot privacy fence and a 6-foot chain link fence. She does not let all the dogs out there at the same time. There is no “doggie door” so the dogs cannot leave their interior kennels.

Q. Sorensen: Is there a limit to the number of kennels? A. Batten: No.

Q. Ockert: Is there a difference in the set up between your existing kennel business and the proposed new set up? A. Batten: I will keep the dogs as quiet as possible. The fencing and shop should make it quiet.

Q. Sorensen: What is the shop setback from the property line from you neighbor? A. Batten: 40 feet from one property line.

Q. McGuire: Are you operating the new kennel now? A. Batten: Not yet.

Q. McGuire: Do you have your own dogs on Echo View Drive? A. Batten: Yes, 6 dogs.

Q. Ockert: There is a dog kennel on Foothill Road, do you know it? A. Batten: No.

Q. Gonzales: You work full-time at Harvest Foods, who takes care of the kennel dogs? A. Batten: I have a helper.

Q. Ockert: Have you contacted DEQ for drain field standards. A. Batten: No, not yet.

Q. Gonzales: The hours of operation are 8 a.m. to 6 p.m., if a dog owner is late how late could they come to pick up their dog? A. Batten: 8 p.m.

Q. Sorensen: Do you board “specialty breed” dogs? A. Batten: No.

Q. Gonzales: If a client brought in 4 small dogs, would they be put in individual kennels or one kennel? A. Batten: They would be put in one kennel.

Q. Gonzales: The CUP application is dated September 2, 2018, and you did not own the property until September 27, 2018, it appears you took a big risk in buying a property that was not approved for a kennel operation. A. Batten: Yes, I took a big risk.

Q. Johnson: At your present kennel, what is the location of the closest residence? A. Batten: The closest house may be further away compared to my proposed kennel. I am asking for 4 kennels and most of my clients have only one dog.

Q. McGuire: You say you want 6 kennels. A. Batten: No more than 6 kennels. A commercial kennel is 4 or more.

Q. Gonzales: Do you ever use bark collars on dogs to reduce the noise? A. Batten: No, not without the owner’s permission. I do use a squirt bottle on the dogs to stop the barking.

Public Agency Comments:

None

Public Comment:

Jill Curtis: Asked for clarification of business hours as the existing website says dogs can be dropped off at 6 a.m. and what is the maximum capacity of dogs that could be kenneled at one time. A. Batten: My website says kennel hours are 8 a.m. to 6 p.m., unless prior arrangement is made. I have 4 dogs for daycare 2 days a week, but regularly there could be 6-8 dogs up to a maximum of 10 dogs.

Ron Olthuis: (opposed) Clarify the number of kennels, is it 6, 5, or 4? A. Batten: The minimum is 4, but it may be 5 or 6 based on the kennel sizes and the configuration in the shop. I personally have 6 dogs and they are in the house all day. Q. Olthuis: I have an issue with dust and additional traffic on Echo View Drive. There are a lot of children on the road and extra traffic is not a good thing. A. Batten: Most kennel traffic is on Tuesday and Thursdays. Most clients board over the weekend. In the summer there is always more traffic.

Jerry Bygren: (opposed) There are 32 residential lots on Echo View Road, 19 of which are summer homes and cabins. McCaffrey Road to Echo Chalet Road has a higher density population than normal SAG-5 residential areas. He does not want additional commercial development.

Kevin Cummings: (opposed) He stated he is new to the area and the issue is noise. The applicant has not covered the burden of proof. There is a lot of noise already and the area is not zoned for this, we should not have this. Any nuisance does devalue property.

Linda Walthers: (favors) I am a client of the applicant and I am impressed with the operation and care she gives at her current kennel location. I would be disappointed if she did not have a new kennel.

Denise Grenier: (opposed) I have two 5-acre parcels and one adjoins the applicant's property. Sure, a kennel operation will devalue my property.

Committee:

Q. Sorensen: Is there any limit on sound emissions and is there a professional company that can assess soundproofing and how it is measured. A. Valade: No.

Q. McGuire: Are there any covenants on the property? A. Ockert: On Echo Chalet it is voluntary, there are no covenants on Echo View.

Jennifer Hargett: (favors) My dogs go to the applicant's current kennel. Q. McGurie: Do you hear barking dogs when you go there. A. Hargett: No.

Trish Eaton: (opposed) I live adjacent to the applicant and the shop (proposed kennels) is 28 feet from our property line. The diagram shows it would be even closer. It seems the zoning requirements are not being met for noise and traffic. She is concerned about odors being so close to the kennels. The prior occupant of the property played music in the shop and that could be heard. Q. McGuire: Are their odors from the applicant's horses? A. Eaton: Yes, the horse corral is 10-15 feet from the property line and I smell the odors as soon as I come out of my house.

Joe Feise: (opposed) I live on McCaffrey Road just south of Denise Grenier. My property line is about 100 yards from the applicant. We have had noise problems from the wedding venue and if the kennel generates noise, then it will be impossible to reverse the permit if it is approved.

Mike Eaton: (opposed) I do not appreciate barking dogs. If there are 10 dogs in daycare, then that is 20 trips a day on Echo View Road. There is no regulation on the number of dogs that could be in the kennels. I like the quiet enjoyment of my property. We have had to deal with the noise of the wedding venue. Living with dogs barking is stressful. Echo View Road is populated with school children who walk the road to the school bus stop.

Del Manicke: (opposed) I live on Echo Chalet and the dogs in the area bark and I can hear them.

Jill Curtis: (opposed) Is there any plan by the applicant for dust abatement? A. Batten: I will tell clients to drive slower.

Linda Walthers (favors) I support the application.

Clarification by applicant: She daycares 4-5 dogs only on Tuesday and Thursday, so there are not 10 vehicle trips per day.

Staff Reply:

Donna Valade stated that 2 horses are permitted per acre of land. Also, this is not considered a “home occupation” business.

Q. Sorensen: Can there be a limit on the number of dogs at the kennel business. A. Valade: No.

Q. Sorensen: Is a CUP not needed for a 3-kennel business? A. Valade: Correct.

Q. McGuire: If granted, would there need to be an additional review if more kennels are built? A. Valade: Yes.

Q. McGuire: If the applicant commits to dog daycare to two days a week, would she need to specify which days.

A. Valade: No condition on specific days of a dog daycare operation could be made.

Applicant Reply:

None

Committee Discussion:

Sorensen I would recommend a conditioning of number of kennels. Question to Valade: How will compliance be monitored? A. Valade: Compliance is complaint driven from the public and complaints are investigated by George Ferris and there will be an inspection one year after the CUP is approved.

Ockert: I live a mile from the applicant and you hear everything. Asked my landlord, a long-time resident Echo Lake, if there has been a kennel on Echo Lake. He stated there was a kennel at Echo Lake Road and Foothill Road and you could hear the dogs barking across the lake.

Sorensen: It is SAG-5 zoning, but the lots are smaller. If it was all 5 acre lots, there would be no problems. Conditions can be put in place to control the issues, if she only has 3 kennels she is not bound to comply.

Gonzales: I have issues with the bleach water that will be put into the ground and possibly leach into the lake.

McGuire: I question Finding of Fact # 6, which states there will be no impact on public water and sewer.

Sorensen: No, this property is not on public water and sewer, it is all private.

Sorensen: I propose a new Finding of Fact that addresses noise and a related Condition.

Johnson: There is no nuisance law in Flathead County.

Gonzales: Then we will add FOF #11 (changed to #13) just to address noise.

Comment by Valade: There is no one in the county who can evaluate noise impacts.

Findings of Fact:

Finding of Fact #10 shall be amended as follows: remove the words “and noise” from line 2 (page 10) and change the word “regularly” to daily on line 4 (page 11).

Finding of Fact #11 shall be amended as follows: Add as a second sentence: “Dog daycare shall be limited to 3 days per week.”

Add Finding of Fact #12: “If there is not adequate soundproofing, noise may have a negative impact on surrounding residents.”

McGuire moved to approve the Findings of Facts, as amended, seconded by Gonzales, passed unanimously.

Committee Vote:

Sorensen moved to forward a favorable recommendation of FCU-18-10 to the Board of Adjustment with a limit of 5 kennels total and subject to staff conditions of approval, as amended: #8 adding “Dog daycare shall be limited to 3 days a week.” and add condition #13 “Applicant shall make every effort to mask kennel sounds beyond the boundary of the property.”

Motion was seconded by McGuire. Vote 3 in favor (McGuire, Johnson, Sorensen), 1 opposed (Gonzales) Motion passed.

2. **FCU-18-11** - A request from Daniel & Nikole Vigil for a conditional use permit for a Home Occupation' for a metal fabrication shop on a lot located within the Bigfork Zoning District. The property is located at 9180 Highway 35 in Bigfork, MT and is zoned R-1 (Suburban Residential). The property contains approximately 1.6 acres.

Staff Report:

The staff report was presented by Rachel Ezell. She provided an update on the road approach and visibility. She referenced pages 8 and 9 regarding noise and stated that as a "home occupation" all business must be conducted within the shop and there can be no outdoor storage. Normal hours of operation are Monday through Friday 8 a.m. to 5 p.m. with only occasional weekend work. Staff is allowing for 8 a.m. to 8 p.m. operations. There was one letter of opposition from a neighbor related to noise.

Q. Johnson: How long does the applicant have to get the approach permit? A. Ezell: One year.

Q. Sorensen: The site distance appears to be adequate.

Applicant Report:

Mr. Vigil stated he would be getting the approach permit within a month. He described his metal fabrication work as being decorative and ornamental.

Q. Sorensen: Is the shop soundproof? A. Vigil: I have used a variety of products and layers to reduce sound in the shop.

Q. Sorensen: Would sound carry? A. Vigil: Only if the shop doors are open. There is no noise in the residence from the shop.

Public Agency Comments:

None

Public Comment:

Steve Williams: (favors) I am in favor of the application as there is no environmental, safety and noise problems. This is a lawful business.

Staff Reply:

None

Applicant Reply:

Mr. Vigil stated he will speak with the neighbors if they have concerns.

Committee Discussion:

None

Findings of Fact:

Sorensen moved to adopt the Findings of Fact, McGuire seconded. The motion passed unanimously.

Committee Vote:

McGuire moved to forward a favorable recommendation of FCU-18-11 to the Board of Adjustment subject to staff's conditions of approval, seconded by Gonzales. There was no additional discussion. Motion passed unanimously.

3. **FCU-18-1** - A request from Sands Surveying, Inc. and Mark Gillette, on behalf of John & Linda Erfle, for a conditional use permit to build two (2) tri-plexes on property located within the Bigfork Zoning District. The property is located at 155 Jewel Basin Court and is zoned B-3 (Community Business). The property contains approximately 0.5 acres.

Staff Report:

Eric Mack presented the application. The applicant was represented by Eric Mulcahy of Sands Engineering with the approval by the applicant.

Q. Sorensen: Why does the Environmental Health Department require a rewrite of Certificate of Subdivision Plat Approval? A. Gonzales: I spoke with the individual who wrote the agency comment letter from the department and it is due to having 2 structures on one lot. Mack stated that the other lots with multiple buildings have received their rewrites of the Certificate of Subdivision Plat Approval.

Q. McGuire: On page 6, paragraph B numeral 1, it states the site plan is for two 4-plex apartments. Is that correct? A. Mack: No that is a typo, it should be two 3-plex apartments.

Q. McGuire: On page 6, paragraph A numeral 3, Finding of Fact #3, should the sentence read "The multi-family dwellings do not appear to have..." and on page 9 Summary of Findings #3 the word "not" should be inserted? A. Mack: Yes.

Applicant Report:

None

Public Agency Comments:

None

Public Comment:

None

Staff Reply:

None

Applicant Reply:

None

Committee Discussion:

None

Findings of Fact:

Sorensen moved to accept the Findings of Facts, as amended in Fact #3 by adding the word "not". Motion was seconded by McGuire, approved unanimously.

Committee Vote:

Sorensen recommended forwarding a favorable endorsement of FCU- 18-12 to the Board of Adjustment subject to staff's conditions of approval, seconded by McGuire. There was no additional discussion. The vote passed unanimously.

Old Business:

Approve Bigfork Land Use Advisory Committee (BLUAC) By-Laws adding amended wording under "Meetings" to allow members attendance at meeting via teleconference or videoconference. Gonzales moved to approve, seconded by McGuire. Vote passed unanimously.

New Business:

None

Adjourn:

Meeting was adjourned at 6:25 p.m.

Respectfully submitted,

Shelley Gonzales, acting secretary